

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 TULIO F. PATINO,

Case No. 2:22-cv-01269-ART-VCF

4 Plaintiff,

5 v.

6 U.S. IMMIGRATION AND CUSTOMS
7 ENFORCEMENT, *et al.*,

8 Defendants.

9

10 **I. DISCUSSION**

11 On August 8, 2022, Plaintiff, an inmate in the custody of the Nye County Detention

12 Center, submitted a civil rights complaint under 42 U.S.C. § 1983 and filed an application

13 to proceed *in forma pauperis*. (ECF Nos. 1-1, 3). Plaintiff's application to proceed *in forma*

14 *pauperis* is incomplete. Plaintiff has not submitted a financial certificate or an inmate

15 account statement for the previous six-month period with his application.

16 Under 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2, an inmate seeking to

17 commence a civil action may apply to proceed *in forma pauperis*, which allows the inmate

18 to file the civil action without prepaying the full \$402 filing fee. To apply for *in forma pauperis*

19 status, the inmate must submit all three of the following documents to the Court:

20 (1) a completed **Application to Proceed in Forma Pauperis for Inmate**, on this

21 Court's approved form (i.e. pages 1 through 3 with the inmate's two signatures on

22 page 3),

23 (2) a **Financial Certificate** properly signed by both the inmate and a prison or jail

24 official (i.e. page 4 of this Court's approved form), and

25 (3) a copy of the **inmate's prison or jail trust fund account statement for the**

26 **previous six-month period**.

27 In the event Plaintiff is having difficulty obtaining the required financial certificate and

28 inmate account statement for the previous six-month period from prison officials, Plaintiff

1 shall file a declaration detailing when he requested the documents, who he spoke to about
 2 the status of the documents, who he followed up with after he did not receive the
 3 documents, and their responses. Plaintiff's declaration shall include dates of his requests,
 4 dates of his follow-up requests, names of the prison officials that he spoke to about the
 5 matter, and their responses. If Plaintiff's declaration demonstrates that he has done all that
 6 was possible to acquire the documents from prison officials, the Court will consider his
 7 application to proceed *in forma pauperis* complete.¹

8 Accordingly, the Court denies Plaintiff's application to proceed *in forma pauperis*
 9 (ECF No. 3) without prejudice because the application is incomplete. The Court will grant
 10 Plaintiff a one-time extension until on or before **October 11, 2022** to file a fully complete
 11 application to proceed *in forma pauperis* containing all three of the required documents or,
 12 alternatively, the first three pages of the application to proceed *in forma pauperis* and a
 13 declaration detailing the efforts he took to acquire the financial certificate and inmate
 14 account statement from prison officials. Absent unusual circumstances, the Court will not
 15 grant any further extensions of time. If Plaintiff does not file a fully complete application to
 16 proceed *in forma pauperis* with all three required documents or, alternatively, the first three
 17 pages of the application to proceed *in forma pauperis* and a declaration detailing the efforts
 18 he took to acquire the financial certificate and inmate account statement from prison
 19 officials on or before **October 11, 2022**, the Court will recommend dismissal of this case
 20 without prejudice for Plaintiff to file a new case with the Court when Plaintiff is able to
 21 acquire all three of the documents needed to file a fully complete application to proceed *in*
 22 *forma pauperis* or, alternatively, the first three pages of the application to proceed *in forma*
 23 *pauperis* and a declaration detailing the efforts he took to acquire the financial certificate
 24 and inmate account statement from prison officials.

25
 26 ¹ Plaintiff must still submit the first three pages of the application to proceed *in forma pauperis* on this
 27 Court's approved form with his declaration. If Plaintiff does not submit the first three pages of the application
 28 to proceed *in forma pauperis* with the declaration, the Court will recommend dismissal of this case without
 prejudice for Plaintiff to open a new case when he is able to acquire the required documents.

1 A dismissal without prejudice means Plaintiff does not give up the right to refile the
2 case with the Court, under a new case number, when Plaintiff has all three documents
3 needed to submit with the application to proceed *in forma pauperis* or, alternatively, the first
4 three pages of the application to proceed *in forma pauperis* and a declaration detailing the
5 efforts he took to acquire the financial certificate and inmate account statement from prison
6 officials. Plaintiff may choose not to file an application to proceed *in forma pauperis* and
7 instead pay the full filing fee of \$402 on or before **October 11, 2022** to proceed with this
8 case.

9 The Court will retain Plaintiff's civil rights complaint (ECF No. 1-1), but the Court will
10 not file the complaint unless and until Plaintiff timely files a fully complete application to
11 proceed *in forma pauperis* with all three documents, or, alternatively, the first three pages
12 of the application to proceed *in forma pauperis* and a declaration detailing the efforts he
13 took to acquire the financial certificate and inmate account statement from prison officials,
14 or pays the full \$402 filing fee.

15 **II. CONCLUSION**

16 For the foregoing reasons, IT IS HEREBY ORDERED that Plaintiff's application to
17 proceed *in forma pauperis* (ECF No. 3) is denied without prejudice to file a new fully
18 complete application to proceed *in forma pauperis* with all three documents.

19 IT IS FURTHER ORDERED that the Clerk of the Court shall send Plaintiff the
20 approved form application to proceed *in forma pauperis* by an inmate, as well as the
21 document entitled information and instructions for filing an *in forma pauperis* application.

22 IT IS FURTHER ORDERED that on or before **October 11, 2022**, Plaintiff shall either
23 pay the full \$402 filing fee for a civil action (which includes the \$350 filing fee and the \$52
24 administrative fee) or file with the Court:

25 (1) a completed Application to Proceed *in Forma Pauperis* for Inmate on this
26 Court's approved form (i.e. pages 1 through 3 of the form with the inmate's two
27 signatures on page 3),

(2) a **Financial Certificate** properly signed by both the inmate and a prison or jail official (i.e. page 4 of this Court's approved form), and

(3) a copy of the inmate's prison or jail trust fund account statement for the previous six-month period.

IT IS FURTHER ORDERED that if Plaintiff is not able to obtain his financial certificate and inmate account statement from prison officials, Plaintiff shall file the first three pages of the application to proceed *in forma pauperis* together with a declaration detailing the efforts he took to acquire the financial certificate and inmate account statement from prison officials.

IT IS FURTHER ORDERED that, if Plaintiff does not file a fully complete application to proceed *in forma pauperis* with all three documents, or, alternatively, the first three pages of the application to proceed *in forma pauperis* and a declaration detailing the efforts he took to acquire the financial certificate and inmate account statement from prison officials, or pay the full \$402 filing fee for a civil action on or before **October 11, 2022**, the Court will recommend dismissal of this action without prejudice for Plaintiff to refile the case with the Court, under a new case number, when Plaintiff has all three documents needed to file a complete application to proceed *in forma pauperis*.

IT IS FURTHER ORDERED that the Clerk of the Court shall retain Plaintiff's civil rights complaint (ECF No. 1-1) but will not file it at this time.

DATED: 8-11-2022

Carl Baskin

UNITED STATES MAGISTRATE JUDGE